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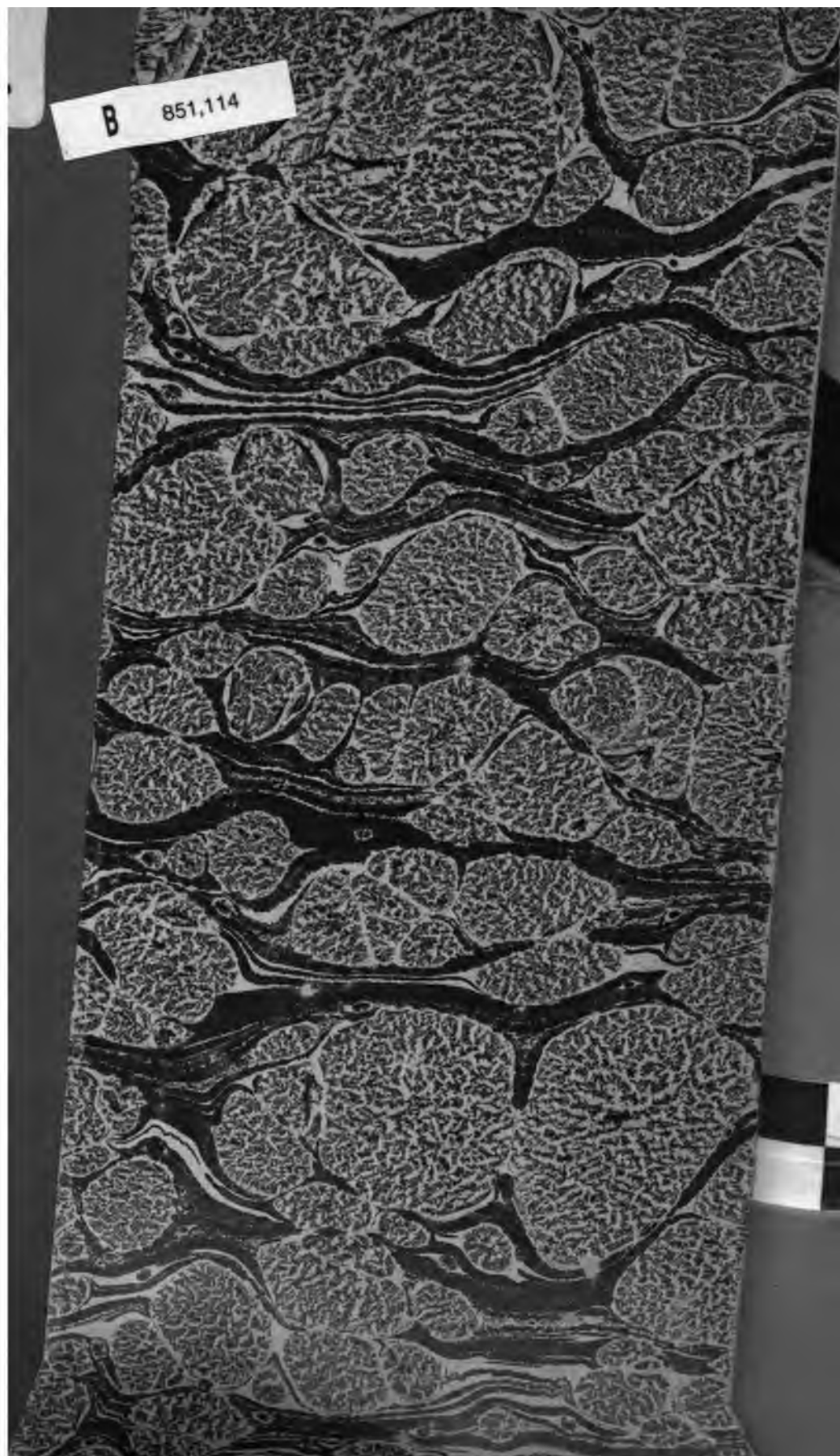
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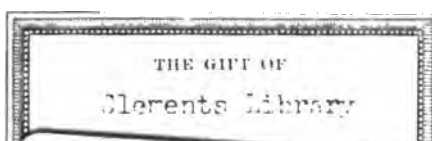
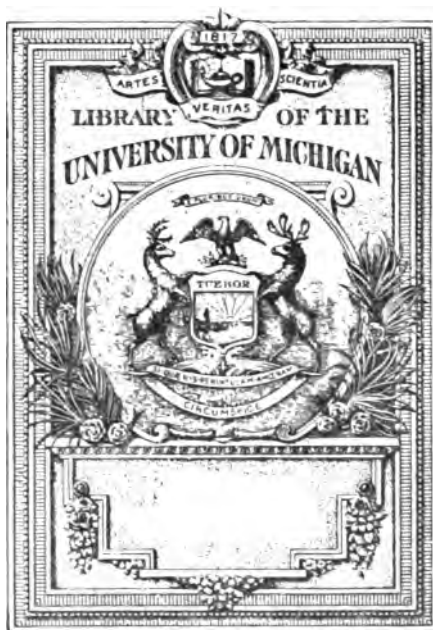
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MR. JOHN W. FOSTER

# THE ALASKAN BOUNDARY

BY

HON. JOHN W.<sup>1899</sup> FOSTER

EX-SECRETARY OF STATE

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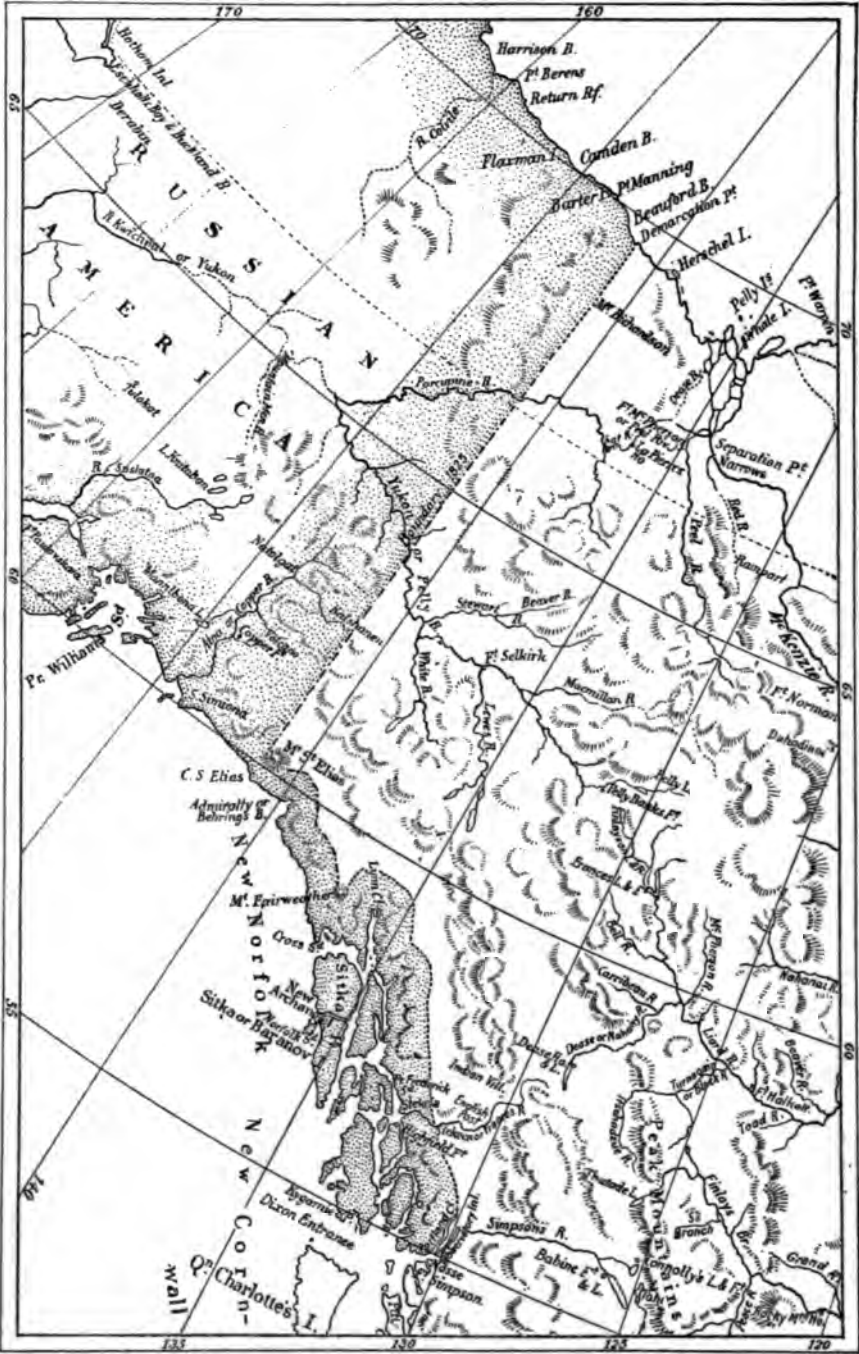


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MAP No. 11

HUDSON'S BAY COMPANY MAP

"Ordered by the House of Commons to be printed, 31st July and 11th August, 1857"

NOTE—The Russian territory, colored yellow on original map, is indicated by dotted portion

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THE ALASKAN BOUNDARY

By Hon. JOHN W. FOSTER,

*Ex-Secretary of State*

In the letter of the President of the Geographic Society inviting me to prepare a paper for THE NATIONAL GEOGRAPHIC MAGAZINE, he expressed a desire that I should discuss the Alaskan boundary, because it was a subject that most deeply concerns our people and the paper would be a timely contribution toward its proper consideration. In accepting the invitation, I feel that I must confine my presentation of the topic to the facts accessible to any student of the events of the period and avoid all reference to pending negotiations.

Happily, however, the material at hand for an accurate understanding of the subject is abundant and within reach of the inquirer. Its history had its inception three-quarters of a century ago; yet few negotiations among nations of such a date are accompanied by so great a mass of concurrent documents and facts to explain the motives and objects had in view by the interested parties, and to make apparent the understanding of these parties as to the effect of the negotiations after their conclusion. The Alaskan boundary is fixed by the treaty of 1825 between Russia and Great Britain, and every step of the anterior negotiations was carefully recorded at the time, and the seventy or more years following the celebration of the treaty are marked by repeated acts of the contracting parties and those claiming under them, explaining their interpretation of that instrument.

The treaty of 1825 grew out of the issuance by the Emperor of Russia of an imperial ukase in 1821, the purport of which,

briefly stated, was (1) a claim by Russia to exclusive jurisdiction on the high sea extending 100 miles from the coast of Asia above latitude  $45^{\circ} 50'$  north and from the northwest coast of America above latitude  $51^{\circ}$  north ; and (2) a prohibition to all foreign vessels to land upon or trade with the natives on any part of the coasts indicated.\* This ukase brought forth a prompt and vigorous protest from both the United States and Great Britain, which was soon followed by negotiations between Russia and the two latter governments. It was early made known that Russia was prepared to withdraw its claim to exclusive jurisdiction in the Pacific ocean and would not insist upon its territorial claim to the coast of America below latitude  $55^{\circ}$ .† As the United States was advancing no serious claim to the territory north of that line, it found little difficulty in reaching an accord, and a treaty between Russia and the United States was signed April 17, 1824, nearly a year before an agreement was reached with Great Britain.

The chief object had in view by Great Britain in its protest and subsequent negotiations was to secure the withdrawal by Russia of her claim to exclusive jurisdiction in the Pacific ocean. At that period Great Britain was the rising power of the world in maritime commerce, the United States being its next competitor, and it made good use of the latter to aid in bringing about this withdrawal. At that day the vast territory of North America lying between the Rocky mountains and the Pacific ocean above latitude  $55^{\circ}$  was almost a *terra incognita*, and, with the immense areas to the east of the mountains still unoccupied except by a few trading posts, the country was held in little estimation by Great Britain. A few navigators had skirted the coast and enterprising American traders had held some intercourse with the Indians living immediately on tide-water, but none but the Russians had penetrated any distance inland. Only one British trading post was established in this region west of the Rocky mountains, on the line of  $55^{\circ}$ , and that 120 miles from the ocean, and there was not one above that line.‡

But we are not left to infer from these historical facts what was the ruling motive and object of Great Britain in opening and prosecuting negotiations with Russia, for these are explicitly stated in the instructions given by the Secretary for Foreign

\* Fur Seal Arbitration Papers, 1893, vol. iv, p. 370, for full text of Russian ukase.

† *Ib.*, p. 390.      ‡ *Ib.*, p. 383.

Affairs, George Canning, to the British negotiators. At the very inception of the negotiations he directed the attention of the first negotiator, Sir Charles Bagot, to "the extravagant assumption of maritime jurisdiction" as the essential point to be adjusted, and as Russia was prepared to waive her pretensions, the mode and degree of disavowal was to be so made as to least offend the national dignity of Russia.\* It was therefore determined that it would be made more easy for Russia to retire from its maritime claim under cover of a treaty of limits. This is made clear in the instruction given by the British Secretary for Foreign Affairs, December 8, 1824, to Sir Stratford Canning, who had succeeded Mr Bagot in the negotiations. He says: †

"The whole negotiation grows out of the ukase of 1821. So entirely and absolutely true is this proposition that the settlement of the limits of the respective possessions of Great Britain and Russia on the northwest coast of America was proposed by us as a mode of facilitating the adjustment of the differences arising from the ukase by enabling the court of Russia, under cover of the more comprehensive arrangement, to withdraw, with less appearance of concession, the offensive pretensions of that edict.

"It is comparatively indifferent to us whether we hasten or postpone all questions respecting the limits of territorial possession on the continent of America, but the pretensions of the Russian ukase of 1821 to exclusive dominion over the Pacific could not continue longer unrepealed without compelling us to take some measure of public and effectual remonstrance against it.

"You will . . . declare without reserve that the point to which alone the solicitude of the British government and the jealousy of the British nation attach any importance is the doing away (in a manner as little disagreeable to Russia as possible) of the effect of the ukase of 1821."

Near the close of this instruction, which was quite lengthy, Secretary Canning, impressed with the importance of the main object, repeats himself in these words:

"It remains only in recapitulation to remind you of the origin and principles of this whole negotiation.

"It is *not* ‡ on our part essentially a negotiation about limits.

"It is a demand of the repeal of an offensive and unjustifiable arrogation of exclusive jurisdiction over an ocean of unmeasured extent. . . .

"We negotiate about territory to cover the remonstrance upon principle." §

With this object in view and under these instructions, the negotiations were initiated at St Petersburg. It will not be possible to follow them in all their details, which are set forth in

\* *Ib.*, 405. † *Ib.*, 446. ‡ The italics appear in the original. § *Ib.*, 448.



Prepared in the Office of the U.S. Coast and Geodetic Survey, Treasury Department.

MAP No. 1

SIR C. BAGOT'S PROPOSALS, 1824



the published correspondence of the British negotiators with the foreign office and of the Russian negotiators with their ambassador in London. I can only give the leading features. It having been determined that the treaty of limits should be agreed upon as a cover to the more essential stipulation to be contained in it, to wit, the disavowal of the maritime jurisdiction, the negotiators, in the first instance, addressed themselves to a fixation of the east-and-west line, or, more particularly, to the point on the northwest coast of America which should limit the possessions of the two governments. From the first moment the boundary was broached Russia had indicated that it would rest its claim to territory on the line of latitude  $55^{\circ}$ , being the limit fixed by the Emperor Paul in the charter of 1799 to the Russian American Company, and which had never been objected to by Great Britain.\*

Sir Charles Bagot, however, in the first instance, proposed "a line drawn through Chatham strait to the head of Lynn canal, thence northwest to the  $140^{\circ}$  of longitude"† (see map No. 1). This line was rejected by the Russian negotiators, and, at the request of Mr Bagot, they submitted a counter-proposal, which was in effect the same as that suggested in the first instance above mentioned, the line of latitude  $55^{\circ}$ ; but "as the parallel of  $55^{\circ}$  would divide Prince of Wales island," they proposed to start the boundary line at the southern extremity of that island, and thence "follow Portland channel up to the mountains which border the coast."‡ The Russian proposal was met by a second proposition from Sir Charles Bagot, to wit, "a line traced from the west toward the east along the middle of the channel which separates Prince of Wales and Duke of York islands from all the islands situated to the north of the said islands until it touches the mainland."§ This was likewise rejected, and he then made a third and final proposal of "a line drawn from the southern extremity of the strait called 'Duke of Clarence sound' through the middle of this strait to the middle of the strait which separates Prince of Wales and Duke of York islands from all the islands lying north of those islands, thence toward the east through the middle of the same strait to the mainland."||

This last British proposition was rejected by the Russian negotiators in a paper of some length, in which they set forth the situation of the parties in interest, and why it was impossible for Russia to modify its proposal. They show that the parties whose

\* *Ib.*, 390, 412.    † *Ib.*, 424.    ‡ *Ib.*, 427.    § *Ib.*, 428.    || *Ib.*, 430.

interests were involved were, on the British side, the Hudson's Bay Company, which was pushing its posts across the Rocky mountains towards the coast, and the Russian American Company, which was in possession of the islands and maintaining a profitable trade with the natives on the mainland, and that unless the latter was protected by a strip of the coast on the mainland, that company would be without a support [*point d'appui*], and would be exposed to the competition of establishments on the mainland which it was their purpose to exclude.\* The motive of the Russian negotiators in insisting upon a strip of the coast is also shown in the report of M. Poletica, one of the Russian plenipotentiaries, to the ministry for foreign affairs of the earliest conferences with Mr Bagot, in which he said the Russian American Company "had mainly in view the establishment of a barrier at which would be stopped, once for all, to the north and to the west of the coast allotted to our American company, the encroachments of the English agents of the . . . Hudson's Bay Company" (M. Poletica to Count Nesselrode, November 3, 1823).

On the other hand, the main purpose of the British plenipotentiary in the particular negotiation above referred to was to secure for British traders a foothold on the Pacific ocean as far above the latitude of  $54^{\circ} 40'$  as possible. In reporting the result of his conferences to the British foreign office, he says: "Our chief objects were to secure . . . the embouchures of such rivers as might afford an outlet for our fur trade into the Pacific."† He further states that his object in presenting the line of Clarence strait was to "preserve uninterrupted our access to the Pacific ocean," and he adds that the line of the Portland channel "would deprive His Britannic Majesty of sovereignty over all the inlets and small bays lying between latitude  $56^{\circ}$  and  $54^{\circ} 45'$ , . . . of essential importance to its [Hudson Bay's] commerce."‡

The negotiators were brought face to face with their conflicting claims, the one side insisting that it must have a strip of territory on the mainland in order to keep the Hudson's Bay Company from the ocean opposite their islands, and the other insisting that the Hudson's Bay Company must have possession of such part of that territory and the inlets as would afford it access to the ocean. Mr Bagot informed the Russian negotiators that he had made his "ultimate proposition," and, being told by them

\* Ib., 428, 430.    † Ib., 424.    ‡ Ib., 425, 429.

that the Emperor's final decision was "that they must continue to insist upon the demarcation as described by them," he announced that he should "consider the negotiations as necessarily suspended," and they were accordingly broken off.\*

Count Nesselrode sent to the Russian ambassador in London an account of the negotiations and their abrupt termination, a copy of which was handed to Secretary Canning. In this report he insists that Russia had gone to the extreme of liberality in its concessions to Great Britain. These were, first, an agreement to disavow the maritime jurisdiction; second, to yield its claim to territory from latitude  $51^{\circ}$  to  $54^{\circ} 40'$ ; third, to grant free access to the British posts in the interior by the rivers which may cross the Russian strip on the mainland; and, fourth, to open Sitka to British trade. The count, after showing that his country was only seeking to hold what its enterprise had gained, and, contrasting the spirit of the two nations, "we wish to keep and the English company wish to obtain," referred to the point upon which the negotiations were broken off—the strip of territory on the mainland—and impressed upon the ambassador the necessity which impelled the Emperor to insist upon it, and then made the following emphatic declaration: "Russia cannot stretch her concessions further. She will make no others, and she is authorized to expect some concessions on the part of England."†

The expectations of Russia were not to be disappointed, for in the month following Secretary Canning informed the Russian ambassador in London that Sir Charles Bagot would be instructed "to admit, with certain qualifications, the terms last proposed by the Russian government." The qualifications related to the width "of the strip of land required by Russia on the continent," to the boundary in the vicinity of Mt St Elias, and the free use of the rivers, seas, straits, and waters which the limits assigned to Russia would comprehend.‡ In his instructions to Sir Charles Bagot, Secretary Canning said: "There are two points which are left to be settled by Your Excellency: "the first, "the eastern boundary of the strip of land to be occupied by Russia on the coast," and, second, the right of resorting to the territory and waters conceded to Russia.§

The second negotiations were mainly confined to the second point. In the interval a treaty had been signed between Russia and the United States, whereby the latter had secured the right

\* *Ib.*, 425.    † *Ib.*, 401.    ‡ *Ib.*, 432.    § *Ib.*, 433.

for ten years to frequent "the interior seas, gulphs, harbours, and creeks upon the coast [north of 54° 40'] for the purpose of trading with the natives of the country." Bagot was instructed to obtain a like privilege for Great Britain, but to secure a longer term than ten years if possible.\* He thereupon made a demand for the privilege, not for a term of ten years, but *forever* as to the coast along the strip of land (*lisière*) up to latitude 60° and as to Sitka, and for ten years as to all the other Russian territory to the north. Russia refused the demand on the ground that such a perpetual concession was repugnant to all national feeling and was inconsistent with the very idea of sovereignty, and the negotiations were again broken off.†

Thereupon Sir Charles Bagot was recalled and Sir Stratford Canning, one of the ablest British diplomatists of the present century, was transferred from Washington to St Petersburg, and the negotiations were again renewed. Sir Stratford Canning was instructed to recede from the demand made by his predecessor, and to accept the language of the Russo-American treaty as to the use of the territorial waters of the strip of land (*lisière*). This left only the eastern boundary of this strip to be definitely fixed. It was from these instructions to Canning that I have quoted the liberal language in which occur the expressions: "It is *not* on our part essentially a negotiation about limits," and "We negotiate about territory to cover the remonstrance upon principle." In this connection it is proper to note that in the early stage of the negotiations, when Sir Charles Bagot reported that Russia had indicated latitude 55° as the line of division, Secretary Canning replied: "It does not appear . . . how far the line proposed . . . was intended to run to the eastward. If to the Rocky mountains, it obviously would be wholly inadmissible by us;" and later in the instruction he says:

"It would . . . be expedient to assign, with respect to the mainland southward of that point [the head of Lynn harbor], a limit, say, of 50 or 100 miles from the coast, beyond which the Russian posts should not be extended to the eastward. We must not on any account admit the Russian territory to extend at any point to the Rocky mountains."‡

\* *Ib.*, 434. † *Ib.*, 439.

‡ *Ib.*, 419, 420. Attached to Secretary Canning's instruction, from which the above quotation is taken, is a letter to him from the deputy governor of the Hudson's Bay Company (*Ib.*, 421), showing that the suggestion of a strip 50 to 100 miles in width originated with that company. He says: "From a want of accurate knowledge of the courses of the rivers or ranges of mountains, it is difficult to suggest any satisfactory boundary in the interior of the country in question, and (if consistent with your





With this instruction in his possession Sir Charles Bagot, at the outset of the negotiations, in response to the Russian demand "for a strip of territory (*lisière*) upon the mainland" which would be "parallel to the sinuosities of the coast,"\* proposed that the eastern line of this strip should run "always at a distance of 10 marine leagues from the shore as far as the 140° of longitude."† Russia suggested that the line should "run along the mountains which follow the sinuosities of the coast."‡ When the second negotiations were resumed Secretary Canning sent Mr Bagot a draft of a treaty in which it was provided that this line should "be carried along the coast in a direction parallel to the sinuosities and *at and within the seaward base* of the mountains by which it is bounded."§ In explanation the Secretary said, if pressed by Russia Mr Bagot might substitute the summit of the mountains if a limit to the east was fixed beyond which the line should not go. The British draft proposal of "the seaward base of the mountains" was rejected by Russia, and its counter-draft was that the line "shall not be wider on the continent than 10 marine leagues."||

But Sir Charles Bagot's attention was so occupied with the other points of the treaty that the matter of the width of the strip did not receive serious consideration until the final stage of the negotiations was undertaken by Sir Stratford Canning, and as Great Britain had by that time receded from all the other contentions, it only remained for him to adjust the eastern line of the strip of the mainland which was to be held by Russia. In his draft of treaty it was proposed that the line should follow the crest of the mountains, provided that if the crest of the mountains should be more than ten marine leagues from the ocean the line should follow the sinuosities of the coast, so that it should at no point be more than ten leagues from the coast. This was in accordance with his instructions.¶ The Russian negotiators objected to the proviso and insisted that the crest of the mountains should be the invariable line, arguing that the natural frontier was the mountains following the coast.

Much of the difficulty in reaching an agreement on this point grew out of the imperfect geographic knowledge of the period.

views) it might, perhaps, be sufficient at present to settle a boundary on the coast only and the country 50 or 100 miles inland, leaving the rest of the country to the north of that point and to the west of the range of the mountains, which separate the waters which flow into the Pacific from those which flow to the east and north, open to the traders of both nations."

\* *Ib.*, 427.    † *Ib.*, 428.    ‡ *Ib.*, 399.    § *Ib.*, 435.    ¶ *Ib.*, 441.    ¶ *Ib.*, 447.

In 1792-'95 George Vancouver, under the direction of the British admiralty, made the first accurate and scientific survey of the northwest coast of North America, and his charts were published in 1798. These charts were for more than a generation the basis and source of information of all maps of that region. His survey was confined to the coast, as he made no exploration of the interior of the mainland beyond what was visible from his vessels. From these he saw at all points in the region under consideration a continuous array of mountains, and upon his charts there appears delineated a regular mountain chain following the sinuosities of the coast line around all the inlets (see maps Nos. 2 and 3). We know that the negotiators of the treaty of 1825 had before them Vancouver's charts and two other maps, one issued by the quartermaster-general's department, St Petersburg, 1802,\* which reproduces the mountains as laid down by Vancouver, the other Arrowsmith's latest map, being the one published in London in 1822, with additions of 1823, and this map omits all mountain features in the region, being entirely blank. The published correspondence frequently shows that as to the interior of the mainland the negotiators were in great ignorance of its topography, and we have seen that even the deputy-governor of the Hudson's Bay Company was no better informed (*supra*, p. 431). Secretary Canning referred to "the mountains which run parallel to the coast and which appear, according to the map, to follow all its sinuosities," but he asks the British plenipotentiary to explain to his Russian colleagues the difficulty had with the United States arising out of the maps of the eastern side of the continent, on which mountains were laid down and which were found afterwards to be quite differently situated, and he adds: "Should the maps be no more accurate as to the western than as to the eastern mountains, we might be assigning to Russia immense tracts of inland territory where we only intended to give, and they only intended to ask, a strip of seacoast."† The British minister's fear was, as we have seen, lest an invariable line of "the summit of the mountains" might carry the Russian line even to the Rocky mountains, and it was to avoid such a contingency that he insisted on a specific limit to the Russian strip of the mainland. The Russian negotiators reluctantly yielded to the British view and the treaty was concluded.

The correspondence and documents thus reviewed by me

\* Found in Fur Seal Papers, 1893, vol. V, appendix to British case.

† *Ib.*, vol. IV, 447.



clearly establish three facts as the result of the negotiations : first, that Russia was to have a continuous strip of territory on the mainland around all the inlets or arms of the sea. Sir Charles Bagot fully understood this, and hence his repeated efforts to push the southern boundary of Russia as far north as possible, so that the Hudson's Bay Company might come down to tidewater with its trading posts, recognizing that this could not be done in front of the Russian line. The purpose for which the strip was established would be defeated if it was to be broken in any part of its course by inlets or arms of the sea extending into British territory. Second, with the strip of territory so established, all the interior waters of the ocean above its southern limit became Russian, and would be inaccessible to British ships and traders except by express license. It was because the Russian negotiators refused to make this license perpetual that the negotiations were a second time broken off, and only renewed when Great Britain yielded on this point. Third, the strip of territory was to be 10 marine leagues wide in all its extent, unless inside of that limit a chain of mountains existed which constituted a natural boundary or watershed between the two countries. The "seaward base" proposed by Great Britain was rejected, and there is no indication that isolated peaks were to constitute the line.

A fourth fact, not material to explain the treaty, is apparent from the record of the negotiations, and especially Secretary Canning's instructions of January 15, 1824, already cited,\* to wit, that while the British government sought to restrict the limits of Russian territory as much as possible, it was prepared in return for the revocation of the ukase of 1821, if Russia was persistent, to accept an east line of the strip distant from the ocean 100 miles, and to have the line to the Arctic ocean drawn along the 135° of longitude, thus giving to Russia a strip more than three times as wide as she obtained and the whole of the Yukon gold districts.

We come now to the provisions of the treaty, and I confine my examination to those respecting which there are existing differences. Article III, in delineating the first section of the boundary, provides that "commencing from the southernmost point of the island called *Prince of Wales Island*, which lies in the parallel of 54° 40' north latitude, . . . the said [boundary] line shall ascend to the north along the channel called

\* *Ib.*, 415-420.

*Portland Channel* as far as the point of the continent where it strikes the  $56^{\circ}$  of north latitude." The United States holds that under this provision the line starting from the extremity of Prince of Wales island shall enter the broad, deep, and usually navigated opening of Portland canal or channel and pass up to its head, and thence on the continent to the  $56^{\circ}$  of latitude. The present contention of Great Britain is understood to be that the line from the extremity of Prince of Wales island should enter the tortuous and narrow channel now known on the British admiralty and American charts as *Pearse canal*, and thence up Portland canal to the  $56^{\circ}$  of latitude, thus placing Wales, Pearse, and a few small islands in British territory.

The second portion of the line in dispute is described in the treaty as follows:

"From this last-mentioned point [the  $56^{\circ}$  above the head of Portland canal] the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the  $141^{\circ}$  of west longitude. . . . Whenever the summit of the mountains which extend in a direction parallel to the coast . . . shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the strip of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the sinuosities of the coast, and which shall never exceed the distance of 10 marine leagues therefrom."

This language of the treaty presupposes that there existed a defined mountain chain, to repeat its terms, "situated parallel to the coast" or "which extend in a direction parallel to the coast;" but the surveys of the region made since the territory of Alaska was ceded to the United States have established the fact that there is no such defined chain or watershed within 10 marine leagues of the sinuosities of the coast except at two points, namely, White and Chilkoot passes; hence the United States claims that the boundary of the strip is placed 10 marine leagues from the coast at all points except at White and Chilkoot passes, and that the strip is an unbroken belt of territory on the mainland, following the sinuosities of the coast around the inlets of the sea. On the other hand, the British claim is that the line from the  $56^{\circ}$  runs directly to the coast and follows the mountains nearest to the outer shore line and crosses not less than ten or twelve arms of the sea or inlets, thus breaking the strip of mainland into as many different sections, and transferring all the water of the bays and inlets to the British possessions (see map No. 12.)



MAP No. 4

RUSSIAN IMPERIAL MAP

"Dressé par M. de Krusenstern, Contre-Amiral . . . publié par ordre de Sa Majesté Imperial. St Petersburg, 1827"



The remaining article to be noted is the seventh, which provides "that for the space of ten years . . . the vessels of the two powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in article 3 for the purposes of fishing and of trading with the natives." I have already referred to the fact that the negotiations were broken off because the British plenipotentiary insisted that the liberty to frequent those "inland seas, gulfs, havens, and creeks" should be made perpetual, and that the negotiations were renewed upon the basis of the privilege granted in the Russo-American treaty of 1824, the language of article IV of which, as Secretary Canning informed Sir Charles Bagot,\* was copied into the British treaty. This ten years' privilege is inconsistent with any other interpretation of the treaty than the complete sovereignty of Russia over, not only a strip of territory on the mainland which follows around the sinuosities of the sea, but also of the waters of all bays or inlets extending from the ocean into the mainland. This is the more manifest when the subsequent history respecting the provision of article IV of the American and article VII of the British treaty is recalled. At the expiration of the term of ten years the Russian minister in Washington gave notice to the Government of the United States that the privilege had expired, and a notification to that effect was made in the public press of the United States.† Persistent efforts were made by the United States to have the privilege extended for another period of ten years, but it was firmly refused by Russia.‡ The British privilege was likewise terminated upon the expiration of the ten years mentioned, and this article of the treaty was never again revived.

Having reviewed the negotiations preceding the treaty of 1825 and examined the provisions of that instrument now in dispute, I pass to a statement of facts since the celebration of the treaty, showing the views of the high contracting parties and those claiming under them as to the stipulations of that convention. As soon after the treaty as the data could be compiled, to wit, in 1827, a map was published in St Petersburg, "by order

\* *Ib.*, 434. Secretary Canning, in his instruction to Sir Stratford Canning, used this language: "Russia cannot mean to give to the United States of America what she withholds from us, nor to withhold from us anything that she has consented to give to the United States."

† Senate Ex. Doc. No. 1, Twenty-fifth Congress, third session, p. 24.      ‡ *Ib.*, 69.

of His Imperial Majesty," on which the boundary line of the Russian possessions on the continent of North America was drawn from the head of Portland channel, at a distance of ten marine leagues from tidewater, around the head of all the inlets to the  $141^{\circ}$  of longitude, and thence following that longitude to the Arctic ocean. Along this line on the map is inscribed the legend: "*Limites des Possessions Russes et Anglaises, d'après la Traité de 1825*" (see map No. 4). So far from this map exciting any protest or criticism its delineation was adopted and followed by the cartographers of His Britannic Majesty, of the government of Canada, and by all the map-makers of the world. John Arrowsmith, the most authoritative cartographer of London, whose map was used by the British negotiators of the treaty of 1825, published a map of the northwest coast in 1832, which states that it contains the latest information which the documents of the Hudson's Bay Company furnish. It will be seen that it exactly follows the line laid down by the Russian imperial map of 1827 (see map No. 5).

Arrowsmith's map was preceded, in 1831, by a map of the northern part of North America, prepared by Joseph Bouchette, deputy surveyor-general of the province of Lower Canada, and "published, as the act directs, by James Wyld, geographer to the King, London, May 2d, 1831." It is "with His Majesty's most gracious and special permission most humbly and gratefully dedicated . . . to His Most Excellent Majesty King William IVth, . . . compiled from the latest and most approved astronomical observations, authorities, and recent surveys." This map traces the Russian boundary on the continent in conformity to the Russian imperial map of 1827 (see map No. 6). And all later publications, either official or unofficial, of Canada followed the same course, as illustrative of which I reproduce the map which bears the following title: "Map of the northwest part of Canada, Indian territories, and Hudson's Bay. Compiled and drawn by Thomas Devine, provincial land surveyor and draftsman. By order of the Hon. Joseph Cauchon, commissioner of Crown lands, Crown department, Toronto, March, 1857" (see map No. 7).

So far as I have been able to examine, the map-makers of all foreign countries followed the boundary line drawn by Russia in 1827. This was notably the case with the French cartographers, who have held a high place in the profession for accuracy and authenticity. From the great number of publications, I have





MAP No. 7

CANADIAN MAP OF 1857

"Compiled and drawn by Thos. Devine, Provincial Land Surveyor and Draftsman. By order of Hon. Joseph Cauchon, Commissioner of Crown Lands, Crown Department, Toronto, March, 1857"



selected one which appeared in 1844, first, because it was based upon the actual observations of a voyage of exploration made by a French official, and, second, because it was "published by order of the King, under the auspices of . . . the president of the council of ministers and of the minister of foreign affairs." It will be seen that on this map is inscribed the line of the "*Traité entre la Russie et l'Angleterre du 28 Fevrier, 1825*," as indicated on the Russian imperial map (see map No. 8).

No map accompanied the treaty of 1867 between Russia and the United States for the cession of Alaska, but immediately after it was signed the Secretary of State caused a map to be compiled and published to indicate the territory acquired by that convention, and it delineates the strip of territory on the mainland just as it had been claimed by Russia forty years before (see map No. 9).

A multitude of maps might be reproduced to show that, with the exception of certain maps published in British Columbia in and after 1884, all such publications, whether emanating from British and Canadian or from disinterested foreign sources, from the time the treaty of 1825 became known up to the meeting of the Joint High Commission in 1898, were of the same character as those already described and reproduced; but I will limit myself to one of the most recent. This was published in the *Scottish Geographical Magazine*, Edinburgh, the July number, 1898, to accompany an article entitled "The Yukon District, by Wm. Ogilvie, astronomer and land surveyor." This map, it will be seen, lays down the line according to the American claim (see map No. 10). It is not cited to establish any authoritative fact, but simply to show that even after the Joint High Commission had been agreed upon the best informed British cartographers had not become aware of any conflicting claim.

Soon after the expiration of the ten years' privilege enjoyed by British vessels and traders to visit "the inland seas, the gulfs, havens, and creeks" enclosed by the Russian strip on the mainland, an important event occurred which is decisive of the interpretation of the treaty given to it by the two nations who were the contracting parties. I have referred to the two competing trading companies in whose interest the negotiations were carried on and for whose benefit, mainly, the treaty was made. The Russian American Company, which was the virtual government of the territory of Russian America, is described

by Bancroft in his "History of Alaska" as a "powerful monopoly, firmly established in the favor of the imperial government, many nobles of high rank and several members of the royal family being among its shareholders." The correspondence shows that the Russian negotiators were chiefly concerned to so frame the treaty as to meet the wishes of the representatives of this company, which was in intimate conference with them at St Petersburg.

The Hudson's Bay Company is so conspicuous a part of the history of British North America that I need hardly refer to its part in the government and development of that vast region of our continent. At the date of the negotiations it had recently absorbed its rival, the Northwest Company, and it was at the height of its power and influence. It was the only representative of British authority in all the region west and north of the province of Ontario at that date and for several years after the middle of the present century. The British negotiators of the treaty of 1825 were influenced almost entirely in their negotiations by the views and interests of this company. Its representatives were in constant communication with Secretary Canning by personal interviews and by letters; the boundary line which they recommended was accepted and urged by the British government; and when negotiations were broken off they were not resumed till this company was heard from, and its views were again adopted and pressed.\* It is safe to assert that no one understood so well as the officials of these two companies the territorial rights of their respective governments and subjects secured by the treaty.

A British vessel in the service of the Hudson's Bay Company, the *Dryad*, reached the Russian post of Fort Wrangell, destined, as it was alleged, for the British territory in the interior, at the headwaters of the Stikine river. The vessel was detained and not allowed to proceed on its voyage. The British government protested to the Russian government and presented to it a large claim for damages. The Russian government, being hard pressed by the British minister, urged the Russian American Company to come to some settlement with the Hudson's Bay Company, and thereupon the governor of the latter, and one of the directors of the former company, with the express authorization of the two governments, met at Hamburg in 1839. As a result of their conferences the Russian American Company agreed to lease

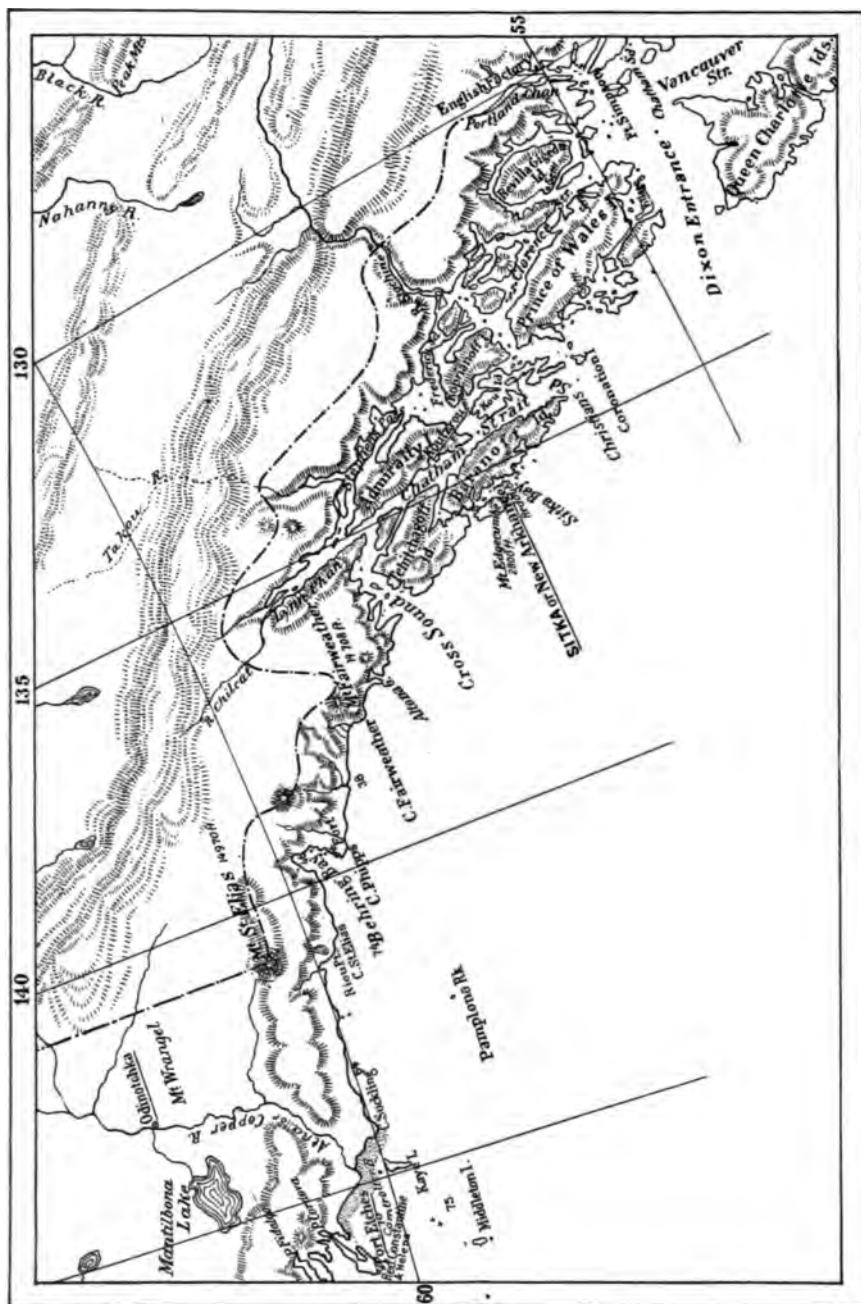
\* Fur Seal Arbitration Papers, vol. iv, pp. 380, 383, 387, 417, 419, 421, 431.



MAP No. 8

FRENCH MAP, 1844

"Publié par ordre du Roi, sous les Auspices de M. le Président de Conseil des Ministres et de M. le Ministre des Affaires Etrangères, Paris, 1844"



MAP No. 9

STATE DEPARTMENT MAP, 1867

"Showing the territory ceded by Russia to the United States. Compiled for the Department of State at the U. S. Coast Survey Office, second edition, May, 1867."

to the Hudson's Bay Company the strip of territory on the mainland and "all the bays, inlets, estuaries, rivers, or lakes in that line of coast" secured to Russia under the treaty, in consideration of the abandonment or satisfaction of the claim for damages on account of the *Dryad*, and also of an annual payment by the Hudson's Bay Company.\* This lease was approved by both the Russian and British governments, and in accordance with its terms the Hudson's Bay Company entered upon and occupied the strip of territory, and at the expiration of the term of years stated the lease was, with the approval of the two governments, extended for another like term, and afterwards prolonged to about 1865.

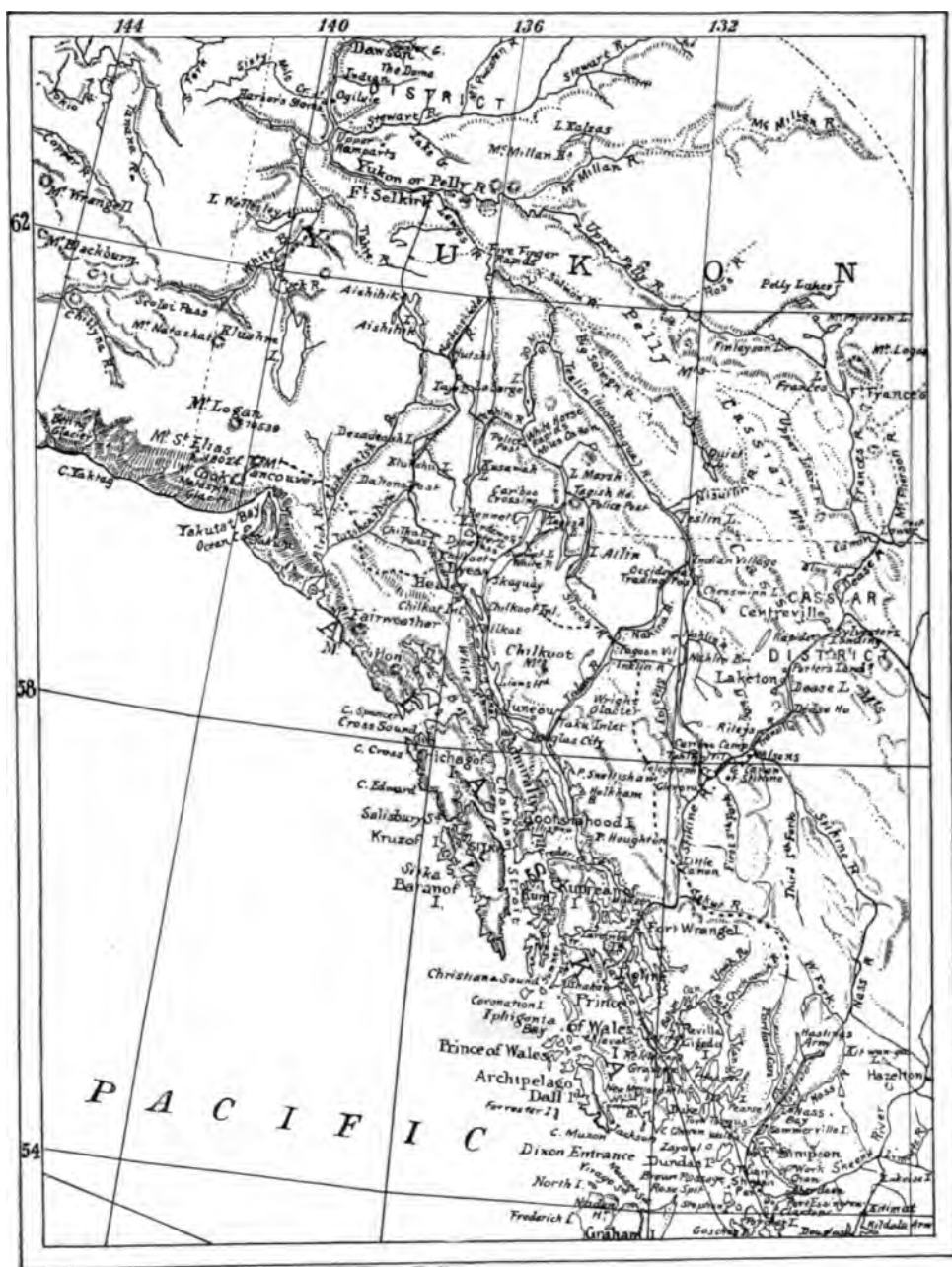
The plenipotentiary on behalf of Great Britain and the Hudson's Bay Company who negotiated and signed this lease was Sir George Simpson, governor of the Hudson's Bay Company, who had assumed that office five years before the treaty of 1825. He was fully conversant with the negotiations, and, as he testified before the Parliamentary committee, was familiar with the leased strip of territory, having traveled over it in the course of his duties as governor. The language of the lease is sufficiently explicit as to the particular territory and waters to which it applied, but we have in addition an authoritative ocular proof of what land and water this lease embraced.

In 1857 a select committee of the House of Commons of the British Parliament was appointed "to consider the state of those British possessions in North America which are under the administration of the Hudson's Bay Company, or over which they possess a license to trade."† Among the members of this com-

\* The following is a copy of article I of the lease:

"ARTICLE I. It is agreed that the Russian American Company, having the sanction of the Russian government to that effect, shall cede or lease to the Hudson's Bay Company for a term of ten years, commencing from the 1st of June, 1840, for commercial purposes, the coast (exclusive of the islands) and the interior country belonging to His Majesty the Emperor of Russia, situated between Cape Spencer, forming the northwest headland of the entrance of Cross sound and latitude 54° 40' or thereabouts, say the whole mainland coast and interior country belonging to Russia, together with the free navigation and trade of the waters of that coast and interior country situated to the southward and eastward of a supposed line to be drawn from the said Cape Spencer to Mount Fairweather, with the sole and entire trade or commerce thereof, and that the Russian American Company shall abandon all and every station and trading establishment they now occupy on that coast, and in the interior country already described, and shall not form any station or trading establishment during the said term of ten years, nor send their officers, servants, vessels, or craft of any description for the purposes of trade into any of the bays, inlets, estuaries, rivers, or lakes in that line of coast and in that interior country." (Russian archives, Department of State.)

† Report from the Select Committee on the Hudson's Bay Company, etc. Ordered by the House of Commons to be printed 31 July and 11 August, 1857, p. 2.



MAP No. 10

SCOTTISH GEOGRAPHICAL MAGAZINE MAP, 1898

"Map of western part of the Dominion of Canada, to accompany a paper by Wm. Ogilvie. *Scottish Geographical Magazine*, 1898"

mittee are found the names of Lord John Russell, Lord Stanley, Mr Roebuck, and Mr Gladstone. Another member was Mr Ellice, a native of Canada and a director of the Hudson's Bay Company. There was also in attendance on the sessions of the committee, as a representative of the government of Canada, Chief Justice Draper, of Canada. Sir George Simpson was examined before this committee and was questioned in detail respecting the lease, and his testimony confirms the foregoing statement. To explain and accompany his testimony, he exhibited to the committee a map of the territory in question, and said: "There is a margin of coast, marked yellow on the map, from 54° 40' up to Cross sound which we have rented from the Russian American Company for a term of years";\* and he proceeded at some length to explain the territory and the reasons for the lease.

No question was raised by any member of the committee, or by the representative of Canada, as to the validity of the lease or to the correctness of the map, which was printed as a part of the report submitted to Parliament. An examination of this map will show that the leased strip of territory is continuous, and is carried around all the inlets and interior waters, in conformity with the present claim of the United States (see map No. 11). This lease was followed by another act on the part of the two governments confirming their approval of the transaction. During the Crimean war, at the request of the two companies, the territory embraced in the lease was, by order of both the British and Russian governments, exempt from the opera-

\* Report, etc., p. 1391. Extract from Simpson's testimony:

"1026. Besides your own territory, I think you administer a portion of the territory which belongs to Russia, under some arrangement with the Russian Company? There is a margin of coast, marked yellow on the map, from 54° 40' up to Cross sound which we have rented from the Russian American Company for a term of years.

"1027. Is that the whole of that strip? The strip goes to Mount St. Elias.

"1028. Where does it begin? Near Fort Simpson, in latitude 54; it runs up to Mount St. Elias, which is farther north.

"1029. Is it the whole of that strip which is included between the British territory and the sea? We have only rented the part between Fort Simpson and Cross sound.

"1030. What is the date of that arrangement? That arrangement, I think, was entered into about 1839.

"1031. What are the terms upon which it was made? Do you pay a rent for that land? The British territory runs along inland from the coast about 30 miles; the Russian territory runs along the coast; we have the right of navigation through the rivers to hunt the interior country. A misunderstanding existed upon that point in the first instance; we were about to establish a post upon one of the rivers, which led to very serious difficulties between the Russian American Company and ourselves. We had a long correspondence, and to guard against the recurrence of these difficulties it was agreed that we should lease this margin of coast and pay them a rent. The rent was, in the first instance, in otters. I think we gave 2,000 otters a year; it is now converted into money. We give, I think, 1,500 a year."

tions of the war. This fact is shown by the Alaska archives and by the testimony of Sir George Simpson before the Parliamentary committee.\*

About the time of the cession of Alaska to the United States gold was discovered in the Cassiar region of British Columbia, reached through the Stikine river, and the passage of miners made it desirable to have the eastern boundary of the strip where it crosses that river more accurately marked, and this led to a movement, in 1873-'4, on the part of the British and United States governments, for a joint survey of the boundary. In a conference at Washington, February 15, 1873, between Secretary Fish and the British minister, Sir Edward Thornton, it was stated by Mr Fish that a survey of the entire boundary, as estimated by the engineers, would cost, for the United States alone about \$1,500,000, and it was suggested that it would be found sufficient to fix the boundary at certain determined points, and there were named the head of Portland canal, "the point where the boundary line crosses the Rivers Skoot, Stakine, Taku, Iselcat, and Chilkah, Mount St. Elias," etc. The legislative assembly of British Columbia, in petitioning the Canadian government for a survey, refers to it as "the boundary of the 30-mile belt of American territory." Sir Edward Thornton communicated to the Foreign Office the result of his conference with Secretary Fish, and it was then submitted through the Colonial Office to the Canadian government, by whom it was referred to the surveyor general, Dennis, who reported favorably upon the plan. He restated the points to be determined and enumerates the rivers "Skoot, Stakine, Taku, Iselcat, and Chilkah," and says that in his opinion "it is unnecessary at present (and it may be for all time) to incur the expense" of any other survey than that named. It was thereupon determined that such a joint survey should be made, the total cost of which the British boundary commissioner, Major Cameron, estimated might reach \$2,230,000. The plan was not at that time carried into execution because of

\* Report, etc., p. 140:

"1738. During the late war which existed between Russia and England, I believe that some arrangement was made between you and the Russians by which you agreed not to molest one another? Yes; such an arrangement was made.

"1739. By the two companies? Yes; and government confirmed the arrangement.

"1740. You agreed that on neither side should there be any molestation or interference with the trade of the different parties? Yes.

"1741. And I believe that that was strictly observed during the whole war? Yes.

"1742. Mr. Bell, which government confirmed the arrangement, the Russian or the English, or both? Both governments."



the failure of the United States Congress to vote the appropriation.\* This fact is cited to show that in 1872-'3 the British and Canadian officials understood that the eastern boundary of the strip crossed the rivers named at some point above their mouths, which are at the head of inlets, including Lynn canal, and that the boundary could not, therefore, cross any of these inlets.

In 1876 a Canadian official was conducting one Peter Martin, charged with some offense, from Canadian territory across the strip of American territory traversed by the Stikine river. Having camped for the night at a point 13 miles above the mouth of the river, Martin, in an attempt to escape, committed an assault on the officer, for which, on his arrival at Victoria, B. C., he was tried and condemned to imprisonment. Martin complained to the consul that he was an American citizen, and the Secretary of State presented the case to the British government. A surveyor was dispatched by the Canadian government to the Stikine river to locate the exact spot of the assault, which he reported to be in United States territory under the treaty of 1825. Thereupon the Canadian Privy Council, following the indication of the British Foreign Office, decided that as the offense for which Martin was convicted was committed in American territory, he must be released, and he was accordingly set at liberty.†

A further indication of the views of the British government respecting the boundary line of the strip is found in the action of the two governments in agreeing upon a provisional line on the Stikine river in 1878. The Canadian and American customs outposts on that river came in conflict in the vicinity of a point approximately 30 miles in a straight line from its mouth, and caused considerable friction. The Canadian government dispatched a surveyor on its own account to survey the river and fix a boundary line, he having been supplied with the text of articles 3 and 4 of the treaty of 1825. He made his report, and claimed to have found a range of mountains filling the requirements of the treaty at a point which crossed the river about 25 miles above its mouth, or about 20 miles in a straight line from the coast. A copy of this report and accompanying map were sent through the British Foreign Office to the minister at Washington, by whom it was submitted to the Secretary of State, with a view to securing his acceptance of this boundary, and Secretary

\* Canadian Sessional Papers No. 125, vol. xi, pp. 11, 21, 28, 36.

† Canadian Sessional Papers cited, pp. 57, 59, 143, 152, 155. U. S. Diplomatic Correspondence, 1877, pp. 268, 271.

Evarts consented to accept it as a provisional line, without prejudice to the rights of the parties when the permanent boundary came to be fixed.\*

The foregoing citations show that whenever the British government or those holding interests under it have had occasion to express their views as to the strip of territory secured to Russia under the treaty of 1825 they have made it plain that they regarded it as an unbroken strip on the mainland following around the inlets of the sea, and that the interior waters enclosed in such strip were Russian or American territorial waters.

When, in 1822, the Duke of Wellington was about to depart as the British plenipotentiary to the International Congress of Verona, he carried with him an instruction from Secretary Caning to bring the protest of his government against the ukase of 1821 to the attention of the Russian plenipotentiaries at that congress. After obtaining the opinion of the great English lawyer, Lord Stowell, he wrote :

“ Enlightened statesmen and jurists have long held as insignificant all titles of territory that are not founded on actual occupation, and that title is, in the opinion of the most esteemed writers on public law, to be established by practical use.” †

There is no claim or pretense that the British authorities or subjects ever occupied any of the territory now in dispute except under the lease cited, or ever exercised or attempted to exercise any acts of sovereignty over the strip or waters enclosed by it. On the other hand, let us examine the acts of occupation and sovereignty exercised by Russia and the United States. First, we have seen that very soon after the treaty of 1825 the Russian government published a map claiming the strip of territory and all the interior waters of the sea enclosed by it. Second, the Russian American Company established forts and trading posts within the strip. Third, by virtue of the lease cited, which was a recognized assertion of its sovereignty, it temporarily transferred these forts and posts to the British company. Fourth, at the termination of the extended lease it re-entered and took possession and remained in possession till the cession of Alaska to the United States. Fifth, it received the allegiance of the native Indians inhabiting the strip, and exercised control and supervision over them. Sixth, immediately after the cession in 1867 the Department of State of the United

\* U. S. Foreign Relations, 1878, pp. 339, 346.

† Fur Seal Papers, etc., vol. 4, p. 388.

States likewise caused a map to be published, setting forth the bounds of Alaska in accordance with the treaty of 1825, and the same claim as to the strip was thereon made as by Russia in its map of 1827. Seventh, upon the transfer of Alaska a portion of the United States army was dispatched to occupy the territory and a detachment was stationed for some time on this strip of the mainland. Eighth, since the cession post-offices and post-routes have been established and maintained at various points on the strip. Ninth, custom-houses have likewise been established and duties collected therein. Tenth, government and mission schools have been maintained, and notably so, for near twenty years, at the head of Lynn canal. Eleventh, the revenue vessels of the United States have continuously since the date of the cession patrolled the interior waters surrounded by the strip to enforce the revenue and other laws of the United States. Twelfth, the naval and revenue vessels of the United States have for the same period exercised acts of sovereignty over the Indian tribes inhabiting the strip, especially about the head of Lynn canal, and the latter have yielded unquestioned allegiance to the United States. Thirteenth, in the Census of 1880 and 1890 all the Indian tribes inhabiting the strip were included in the population of the United States and so published in the official reports. Fourteenth, the territorial government of Alaska has exercised various and repeated acts of sovereignty over the strip and interior waters enclosed by it, and the writs of the United States courts have run throughout its whole extent. Fifteenth, under the territorial claim of the United States and the protection of the government, citizens of the United States have entered and occupied the strip, built cities and towns, and established industrial enterprises thereon.

All the foregoing acts have taken place without a single protest or complaint on the part of the British or Canadian governments, except that some friction has occurred between the customs outposts as to the exact demarcation of the eastern line of the strip. For the first time a statement was presented by the British government to the Government of the United States on the 1st of August, 1898, developing the fact that a difference of views existed respecting the provisions of the treaty of 1825 relating to the strip of territory and the waters embraced by it. Two months previous an agreement had been reached between the two governments for the appointment of a joint commission for the adjustment of pending questions of difference between the United



States and Canada. Soon after the commission met at Quebec on August 23, 1898, it was made known for the first time that the British government would claim that the boundary line should run from the extremity of Prince of Wales island, along the passage known on modern maps as Pearse canal, to the head of Portland canal, thence directly to the coast, and follow the nearest mountains to the coast, crossing all the inlets of the sea, up to Mount St Elias. Such a line would give the United States a strip of an average width of less than five miles, broken at short intervals by the arms of the sea, and would transfer the greater portion of all the inlets to British territory (see map No. 12). As the Canadian government, with the consent of the British Foreign Office, has made public the protocol or official journal of the Joint High Commission, showing the result of its deliberations on the boundary,\* I violate no diplomatic propriety in referring to these facts. The protocol shows that, after sessions of several months, the commissioners were unable to agree. In a failure of concurrence as to the language of the treaty of 1825, one of the two methods of adjustment was proposed by the British commissioners. The first was a conventional boundary, by which Canada should receive, by cession or perpetual grant, Pyramid harbor, on Lynn canal, and a strip of land connecting it with Canadian territory to the northwest, and the remaining boundary line to be drawn in the main conformable to the contention of the United States. The American commissioners, not being prepared to accept this proposition, the alternative was submitted by the British commissioners of an arbitration of the whole territory in dispute, in conformity with the terms of the Venezuelan arbitration, and in response to an inquiry from their American colleagues whether the selection of an umpire from the American continent would be considered, the British commissioners replied that they would regard such a selection as most objectionable.

The American commissioners declined the British plan of arbitration, and stated that there was no analogy between the present controversy and the Venezuelan dispute; that in the latter case the occupation of the territory in question had from the beginning been followed by the constant and repeated protests and objections of Venezuela, and the controversy was one of long standing; but that in the case of the Alaskan territory

\* Fourth session, 8th Parliament, 62 Victoria, 1899. Protocol No. LXIII of the Joint High Commission, Washington, respecting the boundary between Alaska and Canada. Printed by order of Parliament, Ottawa, 1899.

there had been a peaceful and undisputed occupation and exercise of sovereignty for more than seventy years, and that no question respecting this occupation and sovereignty had been raised by the British government until the present commission had been created. They challenged their British colleagues to cite a single instance in history where a subject attended with such circumstances had been submitted to arbitration, and in declining the British proposition they proposed the plan of settlement which had been framed by Secretary Olney and Sir Julian Pauncefote in 1897. The treaty which these two distinguished statesmen framed so carefully marked the most advanced stage yet attained for the peaceful settlement of international questions not susceptible of adjustment by diplomatic negotiation. In that convention, drafted with a view to "consecrating by treaty the principle of international arbitration," they provided that all such questions should be submitted to arbitrators and an umpire, except territorial claims. They recognized that territorial questions affected so vitally the sovereignty and honor of nations that as to them a different method was necessary, and they provided that these should be submitted to a tribunal of three judges of the highest standing in each country, and that a binding decision could only be rendered by a vote of five of the six judges.\* The American commissioners embodied this plan in their proposition for the settlement of the Alaskan boundary dispute, with the modification that a binding decision might be rendered by four of the six judges.

This proposition was rejected by the British commissioners, and, no other plan being brought forward, the Joint High Commission adjourned with the understanding that the boundary question should be referred back to the two governments for further diplomatic negotiations.

\* U. S. Diplomatic Correspondence, 1896, art. vi of treaty, p. 239.



